

SHELLFISH CONSERVATION ORDINANCE  
TOWN OF SWAN'S ISLAND

Adopted March 3, 2003

1. Authority: This ordinance is adopted in accordance with 12 M.R.S.A. Section 6671.
2. Purpose: To establish a shellfish conservation program for the Town of Swan's Island which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
  - A. Licensing
  - B. Limiting the number of shellfish harvesters
  - C. Restricting the time and areas where digging is permitted
  - D. Limiting the minimum size of clams taken
  - E. Limiting the amount of clams taken daily by a harvester
3. Shellfish Conservation Committee: The shellfish conservation program for the Town of Swan's Island will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for terms of three (3) years.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued;
- B. Surveying each clam producing area at least once each three years to establish size distribution and density and annually estimating the status of the Town's shellfish resources;
- C. Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation;
- D. Keeping this ordinance under review and making recommendations for its amendment;
- E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;
- F. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources;
- G. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other Committee activities.

4. Definitions:

A. Resident: The term "resident" refers to a person who has been domiciled in the municipality for at least three months next prior to the time the claim of such residence is made.

B. Nonresident: The term "nonresident" means anyone not qualified as a resident under this ordinance.

C. Shellfish, Clams and Intertidal shellfish resources: When used in the context of this ordinance the words "shellfish", "clams" and "intertidal shellfish resources" mean softshell clams, *Mya arenaria*.

D. Municipality or Town: refers to Town of Swan's Island, Maine.

5. Licensing: Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance.

A commercial digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources.

A. Designation, Scope and Qualifications:

1) Resident Commercial Shellfish License: The license is available to residents of the Town of Swan's Island and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality and reciprocating municipalities.

2) Nonresident Commercial Shellfish License: The license is available to nonresidents of this municipality and entitles the holder to dig and take any amount of shellfish from the shores and flats of this municipality.

3) Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.

4) Nonresident Recreational Shellfish License: The license is available to any person not a resident of this municipality who does not have a State of Maine Commercial Shellfish license issued by the Department of Marine Resources, as determined by the records of the Department of Marine Resources, and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.

5) License must be signed: The licensee must sign the license to make it valid.

B. Application Procedure: Any person may apply to the Town Clerk for the license required by this ordinance on forms provided by the municipality.

1) Contents of the Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.

2) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees: The fees for the license are as stated below and must accompany in full the application for the respective license. The Town Clerk shall submit fees received to the Town Treasurer except for \$1.00 for each license which shall be retained by the Clerk as payment for issuing the license. Fees received for shellfish licenses shall be used by the Town for shellfish management, conservation and enforcement.

Resident Commercial:	\$ 50.00
Nonresident Commercial:	\$100.00
Resident Recreational:	\$ 12.50
Nonresident Recreational	\$ 25.00

D. Limitation of Diggers: Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to execute the control:

1) Prior to March 1, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources will establish the number of commercial and noncommercial licenses to be permitted following the requirements of 12 M.R.S.A Section 6671, paragraph 3-A.

2) The Shellfish Conservation Committee will notify the Town Clerk in writing prior to April 1 of the number of licenses to be issued.

3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.

4) The Town Clerk shall issue licenses to residents and nonresidents as allocated (paragraph 1) until July 1 after which licenses shall be issued to residents and nonresidents on a first-come first-served basis.

5) Licenses may be returned to the Town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

E. License Expiration Date: Each license issued under authority of this ordinance expires at midnight on the 31st day of March next following date of issue.

F. Reciprocal Harvesting Privileges: Licensees from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of their licenses.

G. Waiver of Fee: Recreational shellfish license fees will be waived for persons 65 years or older and 12 years or younger.

H. Suspension: Any shellfish licensee convicted of a violation of this ordinance shall have his shellfish license automatically suspended for a period of thirty (30) days.

1) A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.

2) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the licensee.

3) Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written Request for Appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

6. Opening and Closing of Flats: The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on ten-days' notice published in a newspaper having general circulation in the Town, stating the time, place, and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact.

7. Minimum legal size of softshell clams: It is unlawful for any person to possess softshell clams within the Town of Swan's Island, Hancock County, which are less than two (2) inches in the longest diameter except as provided by subsection B of this section.

A. Definitions:

1) Lot: The word "lot" as used in this ordinance means the total number of softshell clams in any bulk pile. Where softshell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

2) Possess: For the purposes of this section, "possess" means to dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale softshell clam shellstock.

B. Tolerance: Any person may possess softshell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

8. Penalties for violation of sections 1-6 : A person who violates any provision of sections 1 through 6 of this ordinance commits a crime punishable by the following fines:

A. For harvesting shellfish from a closed area or digging shellfish without a license:

- 1) For the first offense, a fine of not less than \$300 and not more than \$1,500; and
- 2) For subsequent offenses, a fine of not less than \$500 and not more than \$1,500.

The court may not suspend a fine imposed under this paragraph or impose a penalty other than the monetary payment of a fine as provided in this paragraph; or

B. For violating any other provision of sections 1 through 6, a fine of not less than \$100 and not more than \$1,000.

8A. Penalties for violation of section 7: A person who violates section 7 of this ordinance commits a Class D crime. The following penalties apply:

A) For possession of a bulk pile of shellfish of which 20% or more of the shellfish are smaller than two inches:

- 1) For the first offense, a fine of not less than \$300; and
- 2) For subsequent offenses within 10 years from the date of the conviction for the first violation, a fine of not less than \$500

B) For possession of a bulk pile of shellfish of which more than 10% but less than 20% of the shellfish are smaller than two inches, a fine not less than \$100 and not more than \$1,000.

9. Effective Date: This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective on its adoption by the municipality provided that a certified copy of the ordinance shall be filed with the Commissioner within twenty (20) days of its adoption.

10. Separability: If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

11. Repeal: Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance which is inconsistent with this ordinance is hereby repealed.

12. Municipal Leasing of Flats: Pursuant to 12 M.R.S.A. Section 6673, the municipality may lease areas in the intertidal zone to the extreme low water mark for the purpose of shellfish aquaculture.

A. Procedure: A written application may be approved by the municipal officers if they find that it conforms to the shellfish program, that it will not cause the total area under lease to exceed 1/4 of all the municipal intertidal zone that is open to the taking of shellfish and that granting it is in the best interests of the community. On approval, the lease shall be forwarded to the Commissioner of Marine Resources.

B. Fees: The annual fee for a resident aquaculture lease shall be:

- 1) Less than one acre \$100
- 2) One to five acres \$250

### **Certification of Ordinance**

I, Gwen J. May, Town Clerk of Swan's Island certify that the foregoing is a true copy of the ordinance entitled "Shellfish Conservation Ordinance Town of Swan's Island, Maine" as adopted March 3, 2003.

Attest, this \_\_\_\_ day of March, 2003

Town Clerk